

New York, New Jersey Foreclosure Delays Threaten Housing Rebound

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NEW YORK ([TheStreet](#)) --A large and growing backlog of foreclosures threaten the housing recovery in New York and New Jersey, according to economists at the New York Federal Reserve.

While home prices have recovered and other measures of housing activity have stabilized, the share of mortgages in foreclosure in the two states exceed the national average.

In Northern New Jersey the share of homeowners in foreclosure rose to nearly 8% in 2012, while at the national level the rate has dropped to about 4%. In downstate New York, which includes New York City metro area, Long Island and Fairfield County, Connecticut, the rate hovered above 7%.

The increasing rate of foreclosures "creates challenges in sustaining and broadening the recovery we have in the region," said Jaison Abel, senior economist at the New York Fed. He said downward pressure on the market is likely as these foreclosures work their way through the courts.

New York and New Jersey are among the 26 states that have adopted a judicial foreclosure process, where the bank is required to prove in court that the borrower is in default in order to foreclose.

In the aftermath of the housing bust, the flood of foreclosures overwhelmed the courts in these states. New foreclosure cases in New York, for instance, are projected to reach roughly 24,000 by the end of 2012, a 43% increase from 2011, according to a recent [report](#) on foreclosures submitted to lawmakers, as reported by *Reuters*.

That is still well short of the peak in 2009 and 2010, before the robo-signing scandal, when officials at big banks including Bank of America, JPMorgan Chase, Citigroup and Wells Fargo signed off on a huge number of foreclosures without verifying documents and following required procedures.

Post the scandal, the number of foreclosures across the country have reduced, but courts have heightened their scrutiny of foreclosure cases, while states have toughened laws to protect borrowers from improper foreclosure practices.

New York now requires banks that initiate a foreclosure action to file an affirmation certifying the accuracy of supporting court documents, something that some banks have had difficulty complying with, according to an annual report on foreclosures submitted to lawmakers.

More borrowers now challenge foreclosures, adding to the caseload. Mediation agreements further prolong the process.

The average number of days a mortgage is in foreclosure from the notice of default to completion stood at 1072 days in New York and more than 900 days in Jersey in the third quarter, according to *RealtyTrac*.

While the record timelines give borrowers more options in seeking out an alternative to foreclosure, the strong borrower protection laws have become somewhat of a double-edged sword for home buyers in these states.

The longer a home stays in the foreclosure process, the greater the chances of the property deteriorating as the homeowners lose the incentive to maintain it. So not only does a foreclosed home sell at distressed prices, it drags down neighborhood prices as well.

The inventory of homes yet to hit the market also casts a shadow on the housing outlook in the region.

Recent data already points to big differences in the performance of markets where foreclosures are processed quickly and those that are processed through courts.

In Arizona for instance, home prices are up 20% year over year, according to the FHFA Home Price Index. While overall foreclosure levels in Arizona are still high, foreclosure activity is on the decline. In contrast, in New York and New Jersey, prices are down 0.4% and 1.7% respectively over the same period.

There are also concerns that foreclosure delays may raise the cost of mortgage credit in the region.

One impact of the foreclosure delays that is yet to be studied is whether it causes underwater borrowers to default. "Delays can influence how long someone chooses to stay in their home," according to Joseph Tracy, senior adviser to NY Fed President William Dudley. "You could see an increase in delinquencies. It is a real risk. But it [the excessive foreclosure delays] is such a novel experience that we don't have data to quantify that risk."

That perceived risk could be why housing giants **Fannie Mae (FNMA)** and **Freddie Mac (FMCC)** are proposing to raise guarantee fees in five states which the agencies believe have higher foreclosure costs due to their legal process, including New York and New Jersey. The proposal, if implemented, could lead to a rise in mortgage rates.

Recent academic research have faulted the judicial foreclosure laws for the lengthy timelines and the adverse impact on the housing market.

"The laws across states use different legal theories as the basis for mortgages, and they balance the rights of creditors and borrowers very differently," explains Assistant Professor of Real Estate Andra Ghent of the W. P. Carey School of Business in a recent [paper](#) calling for a unified regime. "The variations started early in America's history, and they're not really based on economic reasons, but they're still having a major influence on what's happening now with the housing market."

An [earlier research paper](#) in December 2011 by Federal Reserve Officials found that these borrower-friendly laws delay but do not prevent foreclosures.

More recently, however, [research](#) at Federal Reserve of Boston has found that foreclosure mediation efforts adopted by a handful of states including New York and New Jersey have seen some success.

"For homeowners, the home is the biggest investment they have. It is not surprising that states want to make sure that all steps are taken to ensure that they remain in their homes," said the Fed's Tracy.

"Many systems work well under normal circumstances when they are not stressed. But it is difficult to scale up in rare situations when there is a huge demand on resources and this is a resource-intensive process," he said in response to critics of the process.

Todd Soloway, a real estate attorney with Pryor Cashman, says that while the majority of the borrowers do end up losing their home to foreclosures anyway, the courts ensure a sounder financial system. "The judicial process puts the onus on bankers to make sure everything is in order. Ultimately it would benefit both the borrower and the lender. It will not only keep the borrower in their homes, but also force lenders to be more responsible in their lending."

Others argue that the delays in foreclosure process have actually helped the housing market by slowing the foreclosure frenzy on the part of banks. "Banks were competing to foreclose the fastest. Now the market is more resilient," says Peter Ticktin, of Ticktin Law Group that uncovered the robo-signing scandal in Florida. "Maybe we have greater costs and time, but there are more people in their homes, less inventory to depress the markets and the law is sacrosanct."

-- *Written by Shanthi Bharatwaj in New York.*

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